

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

State of Illinois, Illinois Department of Transportation,

Petitioner,

v.

BNSF Railway Company,

Respondent.

Petition for an Order granting authority to construct five (5) new grade separation structures carrying the newly constructed four (4) lane expressway to be known as Illinois Route 336 over and under the mainline track LS-11 of the BNSF Railway Company; construction of a temporary railroad shoo-fly; and the closure of an at-grade crossing, all within a project area beginning at the western edge of Macomb, McDonough County, Illinois and extending westerly approximately 10 miles to the McDonough/Hancock County line.

T06-0047

ORDER

By the Commission:

On May 25, 2006 the Illinois Department of Transportation ("Department" or "IDOT") filed with the Illinois Commerce Commission ("the Commission") a verified Petition in the above captioned matter naming as respondent the BNSF Railway Company ("BNSF" or "Railroad").

Under the Illinois Commercial Transportation Law 625 ILCS 5/18c-7401 ("ICTL"), Commission authorization is required before a grade separation may be constructed, reconstructed or replaced. In the Petition, the Department seeks authorization from the Commission to construct five (5) new grade separation structures carrying the newly constructed four (4) lane expressway to be known as Illinois Route 336 over and under the mainline track LS-11 of the BNSF Railway Company; construction of a temporary railroad shoo-fly; and the closure of an at-grade crossing, all within a project area beginning at the western edge of Macomb, McDonough County, Illinois and extending westerly approximately 10 miles to the McDonough/Hancock County line.

Pursuant to and in accordance with the law and rules and regulations of the Commission, the parties waived their right for a hearing before a duly authorized Administrative Law Judge of the Commission at the Commission's office in Springfield, Illinois. Counsel for IDOT submitted a draft Order granting the Petition to BNSF and Commission Railroad Staff. Staff approved the proposed draft Order, and agreed with the Department's request to waive a hearing providing that certain interpretations of provisions in the draft Order were correct, such as the project four (4) year completion date. On July 18, 2006, BNSF also concurred with the draft Order and affirmatively stated that the draft Order was consistent with a Project Agreement executed by IDOT and BNSF. The Railroad further agreed to entry of the Order without the necessity of a

formal hearing. The matter came on for a paper hearing before a duly authorized Administrative Law Judge ("ALJ") of the Commission on July 21, 2006. No party contested the requests of the Petition. On that date the matter was marked "Heard and Taken".

As indicated, the Department in its Petition requested authority to construct five (5) new grade separation structures carrying the newly constructed four (4) lane expressway to be known as Illinois Route 336 over and under the mainline track LS-11 of the BNSF Railway Company; construction of a temporary railroad shoo-fly and the closure of an at-grade crossing, all within a project area beginning at the western edge of Macomb, McDonough County, Illinois and extending westerly approximately 10 miles to the McDonough/Hancock County line.

The facts alleged in the verified Petition establish that the proposed project location begins at the western edge of Macomb, McDonough County, Illinois and extends westerly approximately 10 miles to the McDonough/Hancock County line. The new highway grade separation structures are required to carry Illinois Route 336 over and under the BNSF track. The Petition also alleges that the Tennessee Township Road 261 grade crossing (DOT/AAR 072 599H; Railroad Mile Post 212.55) of the BNSF's track will need to be closed to complete construction. That at-grade crossing will not be necessary following completion of the new highway overpass structure at the same location. The Department further states that construction of the proposed structures and closure of the Township Road 261 highway-rail grade crossing constitutes a safety benefit to the general public.

The Department is not seeking a financial contribution from the Grade Crossing Protection Fund ("GCPF") or from BNSF Railway Company, for any portion of the costs of the proposed project. The new structures and project elements meet all of the requirements as set forth in 92 Ill. Adm. Code Part 1500 and 1535. A Proposed Draft Order (Petitioner's Late Filed Exhibit 2), which has been reviewed and agreed to by all parties, including Commission Staff, was also filed by the Department on July 19, 2006. The Parties have waived their right to a hearing and Commission staff has filed a response in support of the Commission entering an Order without a hearing. The Commission's ALJ reviewed and analyzed the Petition, the exhibits, the Project Agreement executed by IDOT and BNSF on June 6, 2006 and June 14, 2006, the comments of Staff and the Railroad in response to the Petition, and the proposed draft Order, and thereafter submitted this Order to the Commission based upon and including all of the above mentioned analysis.

The Commission, having given due consideration to the entire record herein, finds that:

- (1) The Commission has jurisdiction over the parties and the subject matter of this proceeding;
- (2) The recitals of fact set forth in the prefatory portion of this Order are supported by the evidence and are adopted as findings of fact;
- (3) Public safety requires that the work proposed in the Petition and set forth in the prefatory portion of this Order be completed as set forth in Petitioner's Exhibits 2, 3, 4 and 5 and Petitioner's Late Filed Exhibit 1, admitted into evidence, including but not limited to the Project Agreement executed by BNSF on June 6, 2006 and by IDOT on June 14, 2006;

- (4) The Department accepts financial responsibility for constructing five (5) new grade separation structures carrying the newly constructed four (4) lane expressway to be known as Illinois Route 336 over and under the mainline track LS-11 of the BNSF Railway Company, construction of a temporary railroad shoo-fly, and the closure of the Township Road 261 at-grade crossing;
- (5) 625 ILCS 5/18c-1701 and 1704 require each "person", as defined by Section 18c-1104, to comply with every regulation or order of the Commission. These sections further provide that any person who fails to comply with a Commission regulation or Order shall forfeit to the state not more than \$1,000 for each such failure, with each day's continuance of the violation being considered a separate offense. While the Commission expects all parties to comply with this Order in all matters addressed herein and in a timely manner, the Commission advises that any failure to comply may result in the assessment of such sanctions;
- (6) Any person making a Request for an Extension of Time up to 30 days to complete a project ordered by the Commission must file a request with the Director of Processing and Information no later than 14 days in advance of the scheduled deadline. An Administrative Law Judge will consider and decide the request;
- (7) Any person making a Request for an Extension of Time that exceeds 30 days must file a Petition for Supplemental Order with the Director of Processing and Information no later than 21 days in advance of the scheduled deadline. The Commission will decide Petitions for Supplemental Orders;
- (8) Requests for Extension of Time and Petitions for Supplemental Orders must include the reason(s) the additional time is needed to complete the work and the time within which the project will be completed. Prior to submitting a Request for Extension of Time or a Petition for Supplemental Order, the person must notify the Commission's Rail Safety Program Administrator that it is unable to complete the project within the ordered timeframe;
- (9) The Commission or its Administrative Law Judge reserves the right to deny Petitions for Supplemental Orders and Requests for Extension of Time, if the reason(s) supporting the request is (are) insufficient or where it appears the person has not made a good faith effort to complete the project within the allotted time. Failure of the Commission or Administrative Law Judge to act on a pleading prior to the deadline means the originally ordered completion date remains in effect.

IT IS THEREFORE ORDERED that the State of Illinois, Illinois Department of Transportation is hereby authorized and directed to construct five (5) new grade separation structures carrying the newly constructed four (4) lane expressway to be known as Illinois Route 336 over and under the mainline track LS-11 of the BNSF Railway Company, pursuant to the Project Agreement executed by BNSF on June 6, 2006 and by the Department on June 14, 2006.

IT IS FURTHER ORDERED that the Tennessee Township Road 261 grade crossing

(DOT/AAR 072 599H; Railroad Mile Post 212.55) of the BNSF's track be closed to complete construction and will not be necessary following completion of the new highway overpass structure at the same location.

IT IS FURTHER ORDERED that the BNSF Railway Company is hereby authorized and directed to remove any and all railroad crossing warning devices or signs at the Tennessee Township Road 261 highway-rail grade crossing upon closure of the crossing by the Illinois Department of Transportation.

IT IS FURTHER ORDERED that the Department shall own, have jurisdiction of, and be responsible for all future maintenance of the new grade separation structures, the highway approaches and all other highway facilities.

IT IS FURTHER ORDERED that the BNSF Railway Company shall continue to be responsible for maintaining the existing ballast, ties, rail and all other railroad facilities.

IT IS FURTHER ORDERED that the Illinois Department of Transportation is and it is hereby required and directed to proceed immediately in performing the work set forth hereinabove and shall complete the work within 48 months from the date of this Order.

IT IS FURTHER ORDERED that since federal funding is being utilized for the grade separation reconstruction, all such work shall be covered by appropriate provisions of Title 23, Chapter I, Subchapter G, Part 646 of the Federal-Aid Policy Guide adopted Dec. 9, 1991. Contractor liability insurance will be required.

IT IS FURTHER ORDERED that the cost of making the improvements herein required shall be divided among the parties as set forth in Section 4 herein above.

IT IS FURTHER ORDERED the Illinois Department of Transportation shall, at six (6) month intervals from the date of Commission Order, submit to the Director of Processing and Information, Transportation Bureau of the Commission, a Project Status Report, stating the progress it has made toward completion of the work herein required. Each Project Status Report shall include the Commission Order number, the Order date, the project completion date as noted in the Order, crossing information (inventory number and railroad milepost), type of improvement, and the name, title, mailing address, phone number, facsimile number, and electronic mailing address of the Department's Project Manager.

IT IS FURTHER ORDERED that the BNSF Railway Company shall within five (5) days of the completion of the work herein required, submit a completely updated United States Department of Transportation Inventory Form (#6180.71) to the Federal Railroad Administration, the Chief of Data Services at the Illinois Department of Transportation, and the Director of Processing and Information, Transportation Bureau of the Commission.

IT IS FURTHER ORDERED that the Illinois Department of Transportation be, and it is hereby required and directed to submit a Project Completion Report, to the Director of Processing and Information, Transportation Bureau of the Commission, stating that the work herein required of

it has been completed. The Project Completion Report shall be submitted within five (5) days after the project completion date.

IT IS FURTHER ORDERED that any person making a Request for an Extension of Time up to 30 days to complete a project ordered by the Commission must file a request with the Director of Processing and Information no later than 14 days in advance of the scheduled deadline. An Administrative Law Judge will consider and decide the request.

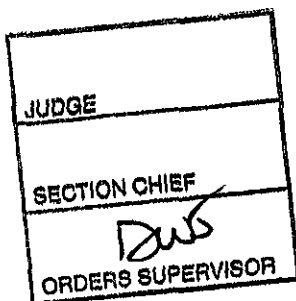
IT IS FURTHER ORDERED that any person making a Request for an Extension of Time that exceeds 30 days must file a Petition For Supplemental Order with the Director of Processing and Information no later than 21 days in advance of the scheduled deadline. The Commission will decide Petitions for Supplemental Orders.

IT IS FURTHER ORDERED that requests For Extension of Time and Petitions for Supplemental Orders must include the reason(s) the additional time is needed to complete the work and the time within which the project will be completed. Prior to submitting a Request for Extension of Time or a Petition for Supplemental Order, the person must notify the Commission's Rail Safety Program Administrator that it is unable to complete the project within the ordered timeframe.

IT IS FURTHER ORDERED that the Commission or its Administrative Law Judge reserves the right to deny Petitions for Supplemental Orders and Requests for Extension of Time, if the reason(s) supporting the request is (are) insufficient or where it appears the person has not made a good faith effort to complete the project within the allotted time. Failure of the Commission or Administrative Law Judge to act on a pleading prior to the deadline means the originally ordered completion date remains in effect.

IT IS FURTHER ORDERED that, subject to Section 18c-2201 and 18c-2206 of the Law, this is a final decision subject to the Administrative Review Law.

By Order of the Commission this 13th day of September, 2006.



Chairman